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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 144

HOMER L. WOXBERG, SR. AND WAYNE FRANKLIN DYKES, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A, pp. 1–22) is reported at 329 F. 2d 284.

JURISDICTION

The judgment of the court of appeals was entered on March 12, 1964. A petition for rehearing was denied on May 4, 1964.[1] The petition for a writ of certiorari was filed on June 1, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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[1] The judgment of the court of appeals and the order denying the petition for rehearing appear, unpaginated, together with the certified copy of the court's opinion, at the end of the Clerk's Transcript (see fn. 2, *infra*).

QUESTION PRESENTED

One count of an indictment charged an embezzlement of labor union funds through a trust device, into which moneys of the union were channeled and ultimately distributed to the alleged embezzlers upon the trust's dissolution. The court of appeals reversed the conviction on this count, without reaching the question of the sufficiency of the proof of fraud, on the ground that the conversion of the union's funds occurred prior to the passage of the federal statute allegedly violated. The principal question presented is whether the court properly sustained the accused's conviction on a second count, charging a different misappropriation of union funds (billing the union for the costs of dissolving the trust and distributing the proceeds), apparently without deciding, for this purpose either, whether the evidence was sufficient to establish the fraudulent character of the trust device.

STATEMENT

Count I of a twenty-count indictment (Clk. Tr. 2–21),[2] filed September 5, 1962, in the United States

[2] The record consists of 21 typewritten volumes, the first of which contains the Clerk's Transcript, or portions of the trial record other than the reporter's transcript, together with the proceedings in the court of appeals, which appear, unpaginated, at the end. We shall refer to this volume by the designation "Clk. Tr.". The other volumes consist of the reporter's transcript of the trial proceedings, which are paginated consecutively with one another but not with the Clerk's Transcript. Reference to these volumes will be indicated by the abbreviation "Tr.".

District Court for the Southern District of California, charged petitioners and two codefendants, Donald Hester and Hobart Barnes, with having embezzled, on or about November 2, 1959, $35,178 in money and property of a labor union of which they were officers and employees, in violation of Section 501(c) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 501(c), popularly known as the Landrum-Griffin Act. Count II charged the same defendants with an additional misappropriation of the union's funds, in the amount of $220, on or about December 2, 1959. The remaining counts are no longer involved.[3] Following a trial by jury, all four defendants were found guilty on both counts (Tr. 2813–2817). Each petitioner was sentenced to three years' imprisonment on each count, the terms to run concurrently, and to pay a fine of $10,000 on count I and $1,000 on count II (Clk. Tr. 208–209). The judgment directed, in addition, that each should become eligible for parole in accordance with

[3] Each of the remaining counts charged one or more of the defendants with the embezzlement of other assets of the union. All of the defendants were acquitted by the jury on all of these remaining counts with the exception of counts IX and X, on which petitioner Woxberg was found guilty (Tr. 2813–2817). Woxberg's convictions on the latter two counts, on each of which he was sentenced to pay a fine of $1,000 (Clk. Tr. 208), were reversed by the court of appeals on the ground of insufficiency of the evidence to support them (Pet. App. A, pp. 21–22).

the terms of 18 U.S.C. 4208(a)(2).[4] Hester and Barnes were each fined $5,000 on count I and $1,000 on count II (Clk. Tr. 207). On appeal by petitioners alone, the Court of Appeals for the Ninth Circuit set aside the convictions on count I on the ground that the conversion of property involved in that count, even if fraudulent (a question the court found it unnecessary to reach, at least for purposes of count I), occurred prior to the effective date of the Landrum-Griffin Act (Pet. App. A, pp. 11–18). The convictions on count II were affirmed (Pet. App. A, pp. 18–21).

The alleged defalcations on which count I was predicated consisted of the diversion of union moneys (refunds on a group insurance policy) into a special fund known as a "Severance Fund" for the benefit of petitioners, their codefendants, and others, and the subsequent distribution of the Fund's assets to the beneficiaries. The alleged embezzlement involved in count II consisted of the use of union funds to pay the costs of auditing and distributing the assets of the special fund. The close interrelation between the two counts makes it necessary to summarize the evidence relating to both.

During the relevant period petitioner Woxberg was the secretary-treasurer of the union involved, Line Drivers Local No. 224 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen

[4] 18 U.S.C. 4208(a)(2) authorizes the court to direct that the person being sentenced become eligible for parole at such time during the prescribed period of imprisonment as the board of parole may decide is appropriate.

and Helpers of America (Tr. 1193). Petitioner Dykes was the honorary president, and a paid business agent of the Local (Tr. 1931). Codefendants Hester and Barnes were other paid business agents of the union (Tr. 1196, 2220–2221, 2401). These four individuals, together with three rank and file members, constituted the elected executive board of seven, the governing body of the Local (Tr. 1195, 1267–1268).

"This was a board," as observed by the court of appeals (Pet. App. A, p. 2), "with apparent autocratic power, but it apparently was what the union members wanted or, at least, settled for." The rules and regulations of the Local, as adopted at a general membership meeting in 1947, included regulations to the effect that the administration, supervision, and direction of the affairs of the union should be vested in, and the salaries and expenses of all employees of the union should be set and approved by, the secretary-treasurer and the president, subject to the approval of the executive board (Tr. 1205–1206). The executive board was empowered to conduct all of the business of the Local between regular meetings of the general membership (Tr. 1206). Although the regulations of the Local did not require that minutes and resolutions of the executive board be brought to the attention of the general membership, such a procedure was regularly followed. The general membership met regularly on the fourth Sunday of each month except during the summer months (Tr. 236, 1218–1219). The executive board customarily met on the same day of each month, just prior to the general

membership meeting (G. Ex. 44, Tr. 276; Tr. 512, 1953).

On February 28, 1954, petitioner Woxberg explained to the general membership of the union, at its regular monthly meeting, a proposed pension plan for the union's officers and office manager. The plan contemplated that it would be financed out of regular union dues. Woxberg explained that the beneficiaries of the proposed plan would request its abolition if it proved unfeasible under the then prevailing dues structure. At the next regular meeting, on March 28, 1954, the plan was "soundly defeated" and tabled indefinitely (G. Ex. 44, Tr. 276; Tr. 280–282, 1235–1241, 1602–1605, 2311). The membership was "upset" over the proposal to set up a pension plan for the union officers when the members themselves did not have such a plan with their employers. It was the feeling of the members that the officers should get a pension plan for the general membership before asking for one for themselves (Tr. 1605, 1949, 2081, 2091, 2571–2572).

The officers of the union thereafter began negotiations with the employers of the union members with a view to establishing a pension plan for the rank and file members (Tr. 1244–1247). Such a plan was ultimately obtained, in 1955, following a prolonged strike (Tr. 1246, 1617–1621). While these negotiations were in progress, the Severance Fund involved herein was established (Tr. 1617–1620).

For some years prior to 1955, Local 224 had been receiving annual "experience rating" refunds from the Occidental Life Insurance Company, the union's

insurance carrier on a group insurance policy on the lives of its members (Tr. 7–26, 1615–1616). Some time prior to January 1955, petitioners conceived the idea of using future refund checks, as they were received from the insurance company, to establish a Severance Fund for the benefit of the union's paid officers and employees.

In or about January 1955, Woxberg retained Richard Perkins, a lawyer-neighbor, to draft a trust agreement of the type Woxberg and his associates had in mind (Tr. 1806, 1810, 1812–1813, 1858). Perkins understood that in undertaking this assignment he was acting for the union (Tr. 1872). At the time, and for many years prior thereto, Local 224 had under retainer a firm of attorneys, located directly across the street from the Local's headquarters, to handle the union's legal affairs (Tr. 1493–1495). This firm, whose monthly retainer was based on a per capita tax on the union membership (Tr. 1493), was never consulted regarding the establishment, administration, or eventual dissolution of the Severance Fund and was never apprised that such a fund existed or was contemplated (Tr. 1496). Perkins knew nothing about the affairs of Local 224, but Woxberg explained what he wanted (Tr. 1858–1860, 1864–1865, 1870). After several drafts and several months the agreement was completed and delivered to Woxberg (Tr. 1813, 1867). On April 4, 1955, Woxberg returned the agreement to Perkins because the name of the Fund in Perkins' draft was not as Woxberg wanted it (Tr. 1813–1814). Thereafter the correction was made and the final draft was delivered (Tr. 1860–1861).

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In the meantime, on March 27, 1955, the executive board, at its regular meeting of that date, authorized Woxberg, according to the minutes of the meeting, "to have an attorney draft a trust agreement covering severance pay for the paid officers and office manager, and deposit the insurance refunds in the severance trust" (G. Ex. 44, Tr. 276). The minutes of the general membership meeting of the same day reflect that the board minutes were "read and approved" (*ibid.*; see also Tr. 284–286).

The trust agreement, entitled "Agreement and Declaration of Trust, Severance Fund Line Drivers Local 224" (G. Ex. 61, Tr. 312; Def. Ex. E, Tr. 278), provided in part as follows (Tr. 1220–1221):

> 1. *Purpose of Trust:*
>
> (a) The membership of Line Drivers Local No. 224, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, hereinafter referred to as "Local 224", an unincorporated association, has by resolution duly adopted voted to make contributions to a severance fund to provide a measure of security for certain paid officers and employees of Local 224 and provide benefits for them similar to some of the benefits available to employees of numerous private employers under pension, retirement, profit-sharing, and stock bonus plans;
>
> (b) Local 224 has directed that insurance refunds payable to it from time to time shall be contributed for the aforesaid purpose, together with such other monies as may be designated for that purpose in future; and

> (c) It is desired to establish definite and orderly procedures through the device of a trusteeship to carry out the aforesaid purpose.

The "beneficiaries" of the trust were declared to be "the persons who now are and hereafter shall be 'covered employees'," as defined in the agreement. "Covered employees" were defined as the occupants, subject to a three-year qualifying period, of any of the following offices of the Local: "Secretary Treasurer, Business Agent, and Office Manager." Benefits were declared to be payable "[a]t the separation date" of the covered employee. "Separation" was defined to mean resignation, retirement, discharge, or death, with a provision, in the case of the last-mentioned eventuality, for the substitution of a successor in interest to receive the deceased beneficiary's share of the benefits. A separated employee was to receive from the trust a sum representing the proportion of the net assets of the trust in existence at the time of his separation which the number of his months of service with the union bore to the total number of months of service of all covered employees. The designated "trustees", who were to consist initially of petitioners and one Gladys Rang, the then office manager (since deceased), were all beneficiaries as well. The trustees were given unrestricted investment powers with respect to the assets of the trust, with the sole qualification that they could make no loans to covered employees, nor any single investment in excess of $5,000 without the consent of all covered employees (Tr. 1221–1228).

On April 1, 1955, the trust agreement was signed and approved by all of the then beneficiaries, who included, in addition to petitioners and Miss Rang, the codefendants Hester and Barnes. Petitioners and Miss Rang signed in their capacity as trustees (G. Ex. 61, Tr. 312; Def. Ex. E, Tr. 278).

On April 3, 1955, at a special meeting of the executive board, Woxberg, according to the minutes of the meeting, "read the Severance Fund trust agreement," and a motion was made, seconded, and carried that the agreement be approved, effective as of April 1st (G. Ex. 44, Tr. 276; Tr. 289). The minutes of the next regular general membership meeting, held on April 24, 1955, state that the April 3 board minutes were "read and approved" (G. Ex. 44, Tr. 276; Tr. 1260–1261, 1263).

Beginning in March 1955, and continuing until March 1958, the union's annual insurance refund checks, four in number, and ranging in amount from $6,707.48 to $8,149.40, were deposited in a checking account at the California Bank under the name of "Severance Fund, Line Drivers Union No. 224" (G. Ex. 1, Tr. 120; G. Exs. 29, 30, 31, 32, Tr. 15). In each instance the refund check was endorsed for deposit in, and went directly into, the Severance Fund account, without passing through the regular union bank account (Tr. 24–25, 37–39). The funds were invested almost entirely in second trust deeds and were supervised by a real estate broker named Larry McBride, the recipient of the $220 payment involved in count II (see *infra*) (Tr. 97, 113–114). At the time it was ultimately dissolved, on November 2, 1959,

and the cash and trust deeds distributed among the then beneficiaries (see *infra*), the Fund was worth approximately $35,000 (Tr. 209–210). It was the distribution to the beneficiaries of these assets on which the allegation of embezzlement involved in count I was based. The $35,000 was exclusive of $5,958 in cash and trust deeds which were distributed to the estate of Gladys Rang in 1958, following her death in 1957, in accordance with the terms of the trust agreement (Tr. 208).

In February of 1958 the group insurance for Local 224 was withdrawn from the Occidental Insurance Company and placed with the Girardian Insurance Company, which was represented locally by a longtime associate of Woxberg's (Tr. 1625–1626). The Occidental Company's group insurance premium at the time of this change amounted to 84 cents per member per month, which figure, however, did not reflect the annual experience rating refunds (Tr. 1626–1627, 1629–1631). The net effective premium, after allowing for the refunds, averaged approximately 62 cents per member per month (Tr. 1629–1630). The Girardian Company's rate, for the same amount of coverage, was a flat 50 cents per member per month, with no refunds (Tr. 1627, 1629). The executive board recommended to the general membership that it change insurance companies because of the "34 cents" savings—*i.e.*, the difference between Girardian's 50-cent premium and Occidental's gross premium of 84 cents—which would be possible under the Girardian policy (Tr. 1629). The minutes of the February 23, 1958, general membership meeting

(at which the executive board's recommendation was adopted) state that in the course of the discussion regarding the changing of insurance companies a motion was made, seconded, and carried that the board check into the possibility of "increasing the death benefit with the balance of the 34 cents without increasing the dues" (G. Ex. 44, Tr. 276).

As a consequence of the change in insurance companies, the last refund received by the union was a check in the amount of $287.69; it was received in February 1959 and covered the brief period in 1958 during which the Occidental policy was in effect (G. Ex. 33; Tr. 15; Tr. 1637). The check was deposited in the union's general account, not the Severance Fund account (Tr. 1637). After March 1958, until the dissolution of the Severance Fund in November 1959, the Fund continued in existence with the assets already on deposit, with no further moneys of the union being placed in it (Tr. 1268).

The Landrum-Griffin Act became effective on September 14, 1959. At or about this time Woxberg again went to his attorney friend, Mr. Perkins, and asked him if it would be possible to terminate the trust and distribute the assets to the named beneficiaries (Tr. 1877–1879). Perkins advised that this could be accomplished if all interested parties agreed to it, and that Woxberg should secure the approval of the union (Tr. 1643, 1847–1850). Perkins accordingly drew up, and delivered to Woxberg, a document entitled "Agreement for Termination of Trust and Distribution of Assets", which was subsequently signed by all of the beneficiaries, including petitioners

(Def. Ex. G, Tr. 383). The termination agreement provided, in part, that the "net assets of the trust, after paying any trust expenses, including attorney fees and any other expenses of winding up" should be distributed by the trustees to the beneficiaries or their nominees in accordance with the formula specified in the trust agreement.

The minutes of the executive board meeting of September 27, 1959, reflect that a motion was made, seconded, and carried that

> the Secretary-Treasurer and Trustees of Severance Fund be authorized in conjunction with the attorneys to discontinue the Sever[an]ce Fund and payment to the Pension Fund and car allowance to paid employees and distribute these moneys to the employees as salary; thereby placing the responsibility of reporting to the Government on the employee involved. [G. Ex. 44, Tr. 276]

The general membership, at its meeting of the same date, adopted an almost identical motion, which, however, omitted reference to "the Sever[an]ce Fund" and the "Trustees of Severance Fund," referring simply to "the Pension Plan" (*ibid.*).[8]

On November 2, 1959, the Severance Fund was terminated and its assets distributed in accordance with the Fund formula (see *supra*, p. 9) (G. Ex. 77, Tr. 1094; Tr. 155–159). At the time of its dissolution the fund amounted to $35,178.19, of which each

[8] For the exact language of the general membership motion, as reflected in the minutes, see fn. 1 to the court of appeals' opinion (Pet. App. A, p. 9).

petitioner received approximately $9,216.[6] The other beneficiaries included (in addition to Hester and Barnes) two organizers for the union who had become members of the Fund less than three years after their employment by the union, contrary to the terms of the Fund agreement (Tr. 233–234, 237, 1559–1565). McBride, the manager of the Fund's investments, performed the necessary auditing and recording work in connection with the winding up of the Fund (Tr. 167–169, 173–175). Notwithstanding that the termination agreement specifically provided that all expenses incident to the trust's termination should be paid for out of Fund assets (*supra*, p. 13), petitioners used union moneys, in the amount of $220, to pay for McBride's services (G. Ex. 2, Tr. 170; Tr. 169–172). In the upper left-hand corner of the $220 check, dated December 2, 1959, and drawn by petitioners on Local 224's bank account, was a notation to the effect that the purpose of the check was to pay for an "Arbitration Audit" (G. Ex. 2, Tr. 170; Tr. 890). The monthly union expense sheets, approved by the executive board, contained the same notation, "Arbitration Audit", in reference to this item (Tr. 1058; Pet. App. A, pp. 18–19). McBride had never performed any audit services (or any other kind of service) for Local 224 directly, and had never per-

[6] Petitioners' shares, together with their codefendants' smaller shares (plus cash contributions by the codefendants in amounts sufficient to equalize the investments of all four), were thereafter transferred to a new fund, called the "Security Fund", which McBride continued to manage for them as a private investment partnership (Tr. 155, 193–196).

formed arbitration services of any kind for anyone (Tr. 172–175). Dorothy Johnson, the Local's office manager at the time this check was issued, who had written the words "Arbitration Audit" on the check (Tr. 860, 890–891), testified that she would ordinarily have checked with Mr. Woxberg in connection with the making of this notation (Tr. 890–891, 993). She had no independent recollection of the incident, however, and acknowledged that her use of the word "Arbitration" might "possibly" have been the result of a misunderstanding on her part of what Woxberg told her the check was for (Tr. 993–994).

There was, in addition, a great deal of other evidence which would have warranted the jury in concluding that, during the entire period in which the Severance Fund was in effect, the existence of the Fund was kept concealed from the rank and file members of the union, including the rank and file members of the executive board.[7]

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[7] For example, Joe Carl, a rank and file member throughout the relevant period, testified that, although he attended 85 to 90 per cent of the general membership meetings, he had never heard of the Severance Fund or of any insurance refunds from the Occidental Insurance Company (Tr. 692–693). He denied, in particular, that there had been any mention of the dissolution of the Severance Fund at the general membership meeting of September 27, 1959 (see *supra*, p. 13) (Tr. 693–694, 695). Keith Ottesen, another rank and file member, testified that he too was present at the September 27, 1959, general membership meeting, and that he had no recollection of any reference at the meeting to any Severance Fund or any other kind of fund for the paid officers (Tr. 585–586, 588–589). He first heard of the Severance Fund, he said, in May 1962, more than two years after its dissolution (Tr. 587–588). William Logan, a rank and file member until

ARGUMENT

1. Petitioners' principal contention (Pet. 3, 20–27)—that the court of appeals, by "declin[ing] to pass upon the validity of the Severance Fund" in upholding their conviction on count II (Pet. 26), neglected to make a necessary "finding" on a material question—presents no question, we submit, requiring further review by this Court.

The court of appeals reversed petitioners' count-I conviction, involving the alleged embezzlement from Local 224 of the contents of the Severance Fund, on the ground that the taking of those funds, whether properly or fraudulently consummated (a question the court found it unnecessary to reach), occurred prior to the passage of the Landrum-Griffin Act—with the consequence, concluded the court, that even if the taking was fraudulent, and hence punishable under local law, it would have been violative of the constitutional prohibition against *ex post facto* laws to apply the sanctions of the federal act to their conduct (Pet. App. A, pp. 11–18). The court reasoned that "when funds were deposited irrevocably in the severance fund the union had no voice in the management or use of these funds, except the duty to join in with the beneficiaries if it was desired to dissolve the trust

June 1958, when he transferred to another Local, testified that he never heard of the Severance Fund or of any insurance refunds (Tr. 627–628, 632–633). Clarence Layman, a rank and file member of the executive board during most of the relevant period, testified that he had no recollection of ever having heard of the Severance Fund or of any insurance refunds (Tr. 508–512, 515, 550). See, also, Tr. 235–238, 345–348.

before its normal expiration"; that the Severance Fund was, consequently, "a valid trust"; and that, accordingly, the subsequent termination of the trust and distribution of its assets to the designated beneficiaries involved no conversion of union properties at that time (Pet. App. A, pp. 13–14).

The court held, however, that its reversal of the conviction on count I presented no obstacle to affirmance of the conviction on count II, involving the alleged fraudulent appropriation of $220 in union funds to pay the expenses of terminating the Severance Fund and dividing its assets among the beneficiaries. With respect to the count-II conviction, the court said, in pertinent part (Pet. App. A, pp. 18–20):

> Whether the union approved of this payment, or whether it was obtained with fraudulent intent by marking the check "arbitration audit" and entering the charge on the union expense sheets in this inaccurate manner presented a question of fact that the jury decided adversely to appellants.
>
> Appellants argue that the union had "a continuing duty to see to it that the funds contained therein were distributed to the employees as a gross amount." (Br. p. 65.) This is valid argument to a jury, but not to this court. Reliance is placed on *United States* v. *Carter*, 1957, 353 U.S. 210, [*] but the facts of that case do not resemble those here present. To make that case applicable would require us to find that the original creation of the severance fund was lawful, a question which we do not reach because of our determination that the

[*] See *infra*, pp. 19–20.

> lack of retroactive effect of § 501(c) is here controlling as to Count I, and a question decided adversely to appellants by the jury.
>
> Nor is the error preserved to appellants by the trial court's failure to give Defendants' Proposed Instruction No. 38 [Footnote omitted.] (Clk's Tr. p. 175.) This claim is based upon appellants' contention that "[E]ven assuming that there is some shred of evidence on which a fraudulent intent could be inferred, the jury could not ignore, nor can this court ignore, the overwhelming evidence that in this case the transfer of the union funds was done under a *bona fide* claim of right, and was completely open and above board." (Brief, p. 57, emphasis by appellants.) While such a claim might well be urged as to Count I, the same evidence does not exist as to Count II. Looking at the evidence as we must, in a manner most favorable to the prosecution, *Glasser* v. *United States*, 1942, 315 U.S. 60, we cannot hold there was no jury question, as a matter of law, on the record before us.

The court apparently indicates in this passage that it found it unnecessary to review the sufficiency of the evidence supporting count I for purposes of count II. The court held that the evidence was nevertheless sufficient, viewed, as it must be, in the light most favorable to the prosecution, to support the conviction on count II.

We submit that this evaluation was correct, and requires no further review by this Court. To be recalled in this connection is the evidence that the agreement terminating the trust specifically provided that the "net" assets of the trust, "after paying any trust ex-

penses, including * * * expenses of winding up," were to be distributed; and that the $220 expenditure from general union funds was incorrectly described on the check and in the union's records as in payment for an "Arbitration Audit," inferably to disguise the true nature of the payment (*supra*, pp. 13, 14–15). Mrs. Johnson's acknowledgment that her use of the word "Arbitration" might "possibly" have been the result of a misunderstanding on her part of what she was told to write on the check (*supra*, p. 15) was not sufficient, in itself, to prevent the jury from validly concluding that petitioners were guilty on count II as charged.

2. Petitioners' contention that the affirmance of their conviction on count II is in conflict with *United States* v. *Carter*, 353 U.S. 210 (Pet. 27–28) is without substance. The *Carter* case held that the surety on a performance bond, guaranteeing the payment of all moneys owing to persons supplying labor and materials to a government contractor, was liable to the trustees of a health and welfare fund, established for the benefit of employees of the contractor under collective bargaining agreements, for payments required by the agreements to be paid into the fund by the contractor. Subsidiarily, the Court held that the trustees' claim for liquidated damages, attorneys' fees, court costs and other related expenses of the litigation had equal merit (353 U.S. at 220). It is primarily this latter aspect of the decision which petitioners deem relevant.

They argue that, just as the employee-beneficiaries of the health and welfare fund involved in the *Carter* case were entitled to have the surety pay the costs of

the *Carter* litigation, rather than suffer the diminution of the assets of the fund to the extent of those costs, so, too, the employee-beneficiaries of the Severance Fund were entitled, upon the Fund's dissolution, to receive the entire corpus of the Fund, undiminished by the expense of its distribution. It was accordingly proper, they argue, for them to bill the union (their employer) for the costs incident to the Fund's termination.

Without pausing to consider all of the respects in which the situation at bar differs from the situation which the *Carter* case presented, it is sufficient to point out that here, as we have previously noted, the agreement for the termination of the Severance Trust specifically provided that all expenses incident to the termination were to be paid for out of the Trust's assets (*supra,* p. 13). In the light of this specific clause in the agreement, there is plainly no basis for the argument that the cost of the auditor's services was a legitimate union expense.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

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